

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CARLLOWS BATTLE,

Petitioner,

v.

No. 12-cv-0972 MCA/SMV

STATE OF NEW MEXICO,

Respondent.

ORDER TO ANSWER


THIS MATTER is before the Court sua sponte under Rule 4 of the Rules Governing Section 2254 Proceedings, and on Petitioner's Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2254 [Doc. 1]. The motion is construed as a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus. Petitioner paid the filing fee and is proceeding in forma pauperis pursuant to 28 U.S.C. § 1915. *See* [Notice of] Filing Fee [Doc. 5]; *see also* Order Granting Application to Proceed in Forma Pauperis [Doc. 6]. The Court has determined that the petition may not be subject to summary dismissal.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Clerk is directed to forward copies of this Order and the petition to Respondent State of New Mexico c/o the New Mexico Attorney General and to the warden of Petitioner's correctional institution;

IT IS FURTHER ORDERED that Respondent answer the petition within thirty (30) days from entry of this Order. Respondent's answer shall advise, but is not limited to, whether the Petitioner has exhausted his state court remedies as to the issues raised in the federal petition. In each case, Respondent shall attach to its answer copies of any pleading pertinent to the issue of

exhaustion which was filed by Petitioner in the sentencing court, the state district court, the state court of appeals and the state supreme court, together with copies of all memoranda filed by both parties in support of or in response to those pleadings. Respondent shall also attach to the answer copies of all state court findings and conclusions, docketing statements, and opinions issued in Petitioner's state court post-conviction or appellate proceedings. In the event Respondent denies exhaustion, Respondent shall identify the State procedures currently available to Petitioner given the nature of Petitioner's claims and their procedural history.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge